

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

ANTHONY CROSS,

Plaintiff,

v.

RON JAEGER, et al.,

Defendants.

Case No. 3:13-cv-00433-MMD-WGC

ORDER

I. SUMMARY

Before the Court is the Report and Recommendation of United States Magistrate Judge William G. Cobb (ECF No. 298) ("R&R"), recommending that the Court deny Plaintiff's motion for summary judgment (ECF No. 222) and grant in part and deny in part Defendant's motion for summary judgment (ECF No. 231). Plaintiff filed an objection to which Defendant has responded. (ECF Nos. 301, 305.) For the reasons discussed below, the Court adopts the R&R in part. The Court denies Plaintiff's motion for leave to file a reply to Defendant's response to his objection. (ECF No. 308.)

The Court further overrules Plaintiff's objections to the Magistrate Judge's rulings relating to Plaintiff's motion for summary judgment. (ECF Nos. 306, 307.)

II. BACKGROUND

Plaintiff Anthony Cross is an inmate in the custody of the Nevada Department of Corrections and was housed at Southern Desert Correctional Center ("SDCC") at the time of the incident. (ECF No. 7 at 1.) Plaintiff's claims are based on an incident that occurred on September 30, 2011, during a disciplinary hearing in which Defendant Sergeant Ron Jaeger and Plaintiff became involved in a heated discussion. (*Id* at 3, 4.)

1 At the conclusion of the hearing, Jaeger allegedly did not give Cross a copy of the
 2 Disciplinary Form III, which Plaintiff needed to submit with his disciplinary appeal. (*Id.*)
 3 Plaintiff alleges that he filed an emergency grievance about the incident that day, but
 4 Jaeger, who lacked the authority to address emergency grievances, intercepted and
 5 “maliciously” denied the grievance and refused to forward the necessary copy to the
 6 grievance coordinator for entry into NDOC’s tracking system. (*Id.* at 5, 14.)

7 Following screening, the Court permitted Plaintiff to proceed on Counts I, I-A, V
 8 and V-A in the Amended Complaint (“FAC”) against Jaeger for allegedly violating the
 9 First Amendment and Article 1, Section 9 of the Nevada Constitution. The allegations
 10 relating to these claims are summarized in the Magistrate Judge’s R&R (ECF No. 298 at
 11 6-8, 17-18), which the Court adopts.

12 **III. LEGAL STANDARD**

13 This Court “may accept, reject, or modify, in whole or in part, the findings or
 14 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party
 15 timely objects to a magistrate judge’s report and recommendation, then the court is
 16 required to “make a *de novo* determination of those portions of the [report and
 17 recommendation] to which objection is made.” 28 U.S.C. § 636(b)(1). Where a party
 18 fails to object, however, the court is not required to conduct “any review at all . . . of any
 19 issue that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985).
 20 Indeed, the Ninth Circuit has recognized that a district court is not required to review a
 21 magistrate judge’s report and recommendation where no objections have been filed.
 22 *See United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the
 23 standard of review employed by the district court when reviewing a report and
 24 recommendation to which no objections were made); *see also Schmidt v. Johnstone*,
 25 263 F. Supp. 2d 1219, 1226 (D. Ariz. 2003) (reading the Ninth Circuit’s decision in
 26 *Reyna-Tapia* as adopting the view that district courts are not required to review “any
 27 issue that is not the subject of an objection.”). Thus, if there is no objection to a
 28 magistrate judge’s recommendation, then the court may accept the recommendation

1 without review. See, e.g., *Johnstone*, 263 F. Supp. 2d at 1226 (accepting, without
2 review, a magistrate judge's recommendation to which no objection was filed).

3 "The purpose of summary judgment is to avoid unnecessary trials when there is
4 no dispute as to the facts before the court." *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*,
5 18 F.3d 1468, 1471 (9th Cir. 1994). Summary judgment is appropriate when the
6 pleadings, the discovery and disclosure materials on file, and any affidavits "show there
7 is no genuine issue as to any material fact and that the movant is entitled to judgment
8 as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986). An issue is
9 "genuine" if there is a sufficient evidentiary basis on which a reasonable fact-finder
10 could find for the nonmoving party and a dispute is "material" if it could affect the
11 outcome of the suit under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S.
12 242, 248-49 (1986). Where reasonable minds could differ on the material facts at issue,
13 however, summary judgment is not appropriate. See *id.* at 250-51. "The amount of
14 evidence necessary to raise a genuine issue of material fact is enough 'to require a jury
15 or judge to resolve the parties' differing versions of the truth at trial.'" *Aydin Corp. v.*
16 *Loral Corp.*, 718 F.2d 897, 902 (9th Cir. 1983) (quoting *First Nat'l Bank v. Cities Service*
17 *Co.*, 391 U.S. 253, 288-89 (1968)). In evaluating a summary judgment motion, a court
18 views all facts and draws all inferences in the light most favorable to the nonmoving
19 party. *Kaiser Cement Corp. v. Fishbach & Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir.
20 1986).

21 The moving party bears the burden of showing that there are no genuine issues
22 of material fact. *Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982). Once
23 the moving party satisfies Rule 56's requirements, the burden shifts to the party
24 resisting the motion to "set forth specific facts showing that there is a genuine issue for
25 trial." *Anderson*, 477 U.S. at 256. The nonmoving party "may not rely on denials in the
26 pleadings but must produce specific evidence, through affidavits or admissible
27 discovery material, to show that the dispute exists," *Bhan v. NME Hosps., Inc.*, 929 F.2d
28 1404, 1409 (9th Cir. 1991), and "must do more than simply show that there is some

1 metaphysical doubt as to the material facts.” *Orr v. Bank of Am.*, 285 F.3d 764, 783 (9th
2 Cir. 2002) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574,
3 586 (1986)). “The mere existence of a scintilla of evidence in support of the plaintiff’s
4 position will be insufficient.” *Anderson*, 477 U.S. at 252.

5 **IV. MOTIONS FOR SUMMARY JUDGMENT**

6 The R&R recommends granting summary judgment in favor of Defendant on
7 Plaintiff’s First Amendment access to courts claims with respect to Jaeger’s refusal to
8 provide Plaintiff with the Disciplinary Form III and Jaeger’s handling and denial of
9 Plaintiff’s emergency grievance (“Emergency Grievance”), and on Plaintiff’s First
10 Amendment retaliation claim with respect to Jaeger’s handling and denial of Emergency
11 Grievance. (ECF No 298.) The R&R recommends denying summary judgment on
12 Plaintiff’s First Amendment retaliation claim with respect to Jaeger’s refusal to provide
13 Plaintiff with Disciplinary Form III. Defendant does not object to this recommendation.
14 However, Plaintiff has filed an objection. (ECF No. 301.) Having reviewed the R&R, the
15 briefs relating to the parties’ competing motions for summary judgment, Plaintiff’s
16 objection to the R&R and Defendant’s response, the Court adopts the R&R’s
17 recommendations in part.¹ The Court finds that Defendant’s response addressed
18 Plaintiff’s objection and the issues have been thoroughly briefed. Accordingly, the Court
19 denies Plaintiff’s motion for leave to file a reply to Defendant’s response. (ECF No. 308.)

20
21 ¹ The R&R recommends that to the extent Plaintiff requests that the Court defer
22 consideration of Defendant’s motion for summary judgment under Fed. R. Civ. P. 56(d)
23 when he referenced his pending objections to discovery rulings, Plaintiff’s request
24 should be denied because he failed to attach a declaration to explain how he cannot
25 present facts essential to oppose Defendant’s motion. (ECF No. 298.) Plaintiff responds
26 that he signed his motion under penalty of perjury. (ECF No. 301 at 2.) However, Rule
27 56(d) addresses the situation where a party who opposes summary judgment asks the
28 Court to defer considering the motion until more discovery may be conducted. In that
situation, the party who seeks to defer a ruling must show by “affidavit or declaration
that for specified reasons, it cannot present facts essential to justify its opposition.” Fed.
R. Civ. P. 56(d). Plaintiff has not submitted such a declaration here. Moreover, Plaintiff
affirmatively moved for summary judgment before Defendant even filed his motion.
(ECF Nos. 222, 231.) It would be unreasonable for Plaintiff to ask the Court to defer
ruling on Defendant’s motion when Plaintiff is simultaneously moving for summary
judgment.

1 **A. Access to Courts Claims**

2 The Magistrate Judge found Plaintiff cannot show that Jaeger's failure to give
3 him the Disciplinary Form III interfered with Plaintiff's ability to access the courts. (ECF
4 No. 298 at 9-10.) The Court agrees.

5 To show a violation of his constitutional right of access to the courts, Plaintiff
6 must establish that he suffered an actual injury. *Lewis v. Casey*, 518 U.S. 343, 348
7 (1996). "Actual injury" is defined as "actual prejudice with respect to contemplated or
8 existing litigation, such as inability to meet a filing deadline or present a claim." *Id.*
9 (citation and internal quotation marks omitted). The right of access to the courts is
10 limited to non-frivolous direct criminal appeals, habeas corpus proceedings, and § 1983
11 actions. *Id.* at 353 n.3, 354-55.

12 Plaintiff cannot show that that he suffered such "actual injury" in connection with
13 Defendant's refusal to give him the Disciplinary Form III. While Plaintiff was unable to
14 appeal his disciplinary conviction through NDOC's grievance process because he did
15 not attach the Disciplinary Form III, his injury does not amount to "actual prejudice with
16 respect to contemplated or existing litigation." *Id.*

17 Nor can Plaintiff show "actual injury" with respect to Defendant's handling of his
18 Emergency Grievance. Even assuming that Jaeger did not have authority to address
19 the Emergency Grievance, Jaeger's conduct affects no prejudice with respect to any
20 litigation.² Plaintiff does not claim that he could not have utilized the available grievance
21 procedure under AR 740, or that Jaeger took any subsequent action to interfere with
22 him doing so. In fact, Plaintiff filed a grievance to challenge Jaeger's authority to
23 address the Emergency Grievance (ECF No. 222 at 64-70) and is asserting claims in

24 _____
25 ² Jaeger directed Plaintiff to utilize the proper grievance procedures by
26 responding: "[N]ot an emergency per AR 740; use proper grievance procedures." (ECF
27 No. 222 at 62.) In his objection, Plaintiff challenges the R&R's finding that "Plaintiff does
28 not dispute that his emergency grievance did not raise an emergency, which AR 740
references as presenting a risk of serious injury or breach of security." (ECF No. 298 at
20; ECF No. 301 at 16.) Yet, Plaintiff contends that whether it was an emergency has
nothing to do with his claim which was why he did not dispute it. (ECF No. 301 at 16.)
The Magistrate Judge thus correctly noted what Plaintiff did not dispute.

1 this case based on Jaeger's handling of the Emergency Grievance.

2 Plaintiff argues that he had a right to exhaust his administrative remedies and
3 Defendant interfered with that right by intercepting the Emergency Grievance when he
4 did not have authority to address it pursuant to AR 740. (ECF No. 301 at 4.) Assuming
5 and accepting that Defendant addressed the Emergency Grievance when he did not
6 have authority to do so and failed to forward the Emergency Grievance or destroyed it,
7 Defendant's conduct may have violated NDOC's grievance procedures, but it is not
8 enough to establish injury to support a First Amendment access to courts claim.³ It is
9 established law that an inmate does not have a constitutional right to have his
10 grievances either decided or processed in a particular manner. *See, e.g., Ramirez v.*
11 *Galaza*, 334 F.3d 850, 860 (9th Cir. 2003). Moreover, Plaintiff is pursuing his claims
12 against Jaeger, and Jaeger has not claimed failure to exhaust administrative remedies
13 as an affirmative defense.⁴

14 **B. Retaliation Claims**

15 Prisoners have a First Amendment right to file prison grievances and to pursue
16 civil rights litigation in the courts. *Rhodes v. Robinson*, 408 F.3d 559, 567 (9th Cir.
17 2004). To state a viable First Amendment retaliation claim in the prison context, a
18 plaintiff must allege: "(1) [a]n assertion that a state actor took some adverse action
19 against an inmate (2) because of (3) that prisoner's protected conduct, and that such
20 action (4) chilled the inmate's exercise of his First Amendment rights, and (5) the action
21 did not reasonably advance a legitimate correctional goal." *Id.* at 567-68. Genuine
22 issues of material fact exist to preclude summary judgment on Plaintiff's retaliation
23 claims.

24 ³ Plaintiff's objection recites the Court's screening order, but the Court had
25 viewed Plaintiff's claims under the more liberal standard under Rule 12(b)(6) and
26 accepting Plaintiff's allegations as true.

27 ⁴ Had Jaeger asserted such a defense, Plaintiff would be correct to point out he
28 was unable to properly exhaust his administrative remedies and should be excused
from doing so because of Jaeger's interference. This is because proper exhaustion is
not required under the Prison Litigation Reform Act if administrative remedies are
"effectively unavailable." *Sapp v. Kimbrell*, 623 F.3d 813, 823 (9th Cir. 2010).

1 **1. Defendant's Refusal to Provide the Disciplinary Form III**

2 The Magistrate Judge found genuine issues of material fact exist as to the first
3 four factors, which precludes summary judgment for either party on Plaintiff's claim of
4 retaliation based on Jaeger's failure to provide the Disciplinary Form III. (ECF No. 298
5 at 11-16.) The Court agrees with Judge Cobb's findings. Plaintiff does not challenge the
6 Magistrate Judge's finding that a material issue of fact exists as to whether Jaeger's
7 refusal to give Plaintiff the Disciplinary Form III had a chilling effect on Plaintiff's
8 exercise of his First Amendment right. This finding alone is sufficient to deny summary
9 judgment against both parties. Moreover, because the Court must view all facts and
10 draw all inferences in the light most favorable to the nonmoving party, Jaeger, when
11 considering Plaintiff's motion, the Court must deny Plaintiff's motion in light of the
12 existence of genuine issues of material fact on four essential elements of Plaintiff's
13 retaliation claim.⁵ See *Kaiser Cement*, 793 F.2d 1100 at 1103.

14 **2. Defendant's Handling of the Emergency Grievance**

15 Plaintiff takes issue with the Magistrate Judge's finding with respect to Jaeger's
16 handling of his emergency Grievance. The R&R summarizes Jaeger's discovery
17 responses where he admitted in a supplemental response to a request for admission
18 that he did not input the Emergency Grievance into NOTIS, but he stated that "a review
19 of NOTIS reveals that the emergency grievance is documented in NDOC's system
20 under grievance log number 20062931392."⁶ (ECF No. 298 at 21.) In his objection,
21 Plaintiff pointed out that grievance log number 20062931392 (Exhibit F to Plaintiff's
22 motion (ECF No. 222 at 64)) is his informal grievance, not the Emergency Grievance,
23 which is Exhibit E to Plaintiff's motion (ECF No. 222 at 62). (ECF No. 301 at 18-19.)
24 Plaintiff is correct that the two documents are not the same. Exhibit F, Plaintiff's informal

25 _____
26 ⁵ For this reason, Defendant's failure to address the fifth element (ECF No. 301
at 10) does not affect the Court's findings.

27 ⁶ In a supplemental response to interrogatory no. 19, Defendant also stated that
28 "it appears this [emergency] grievance was documented in NOTIS under grievance log
number 20062931433." (ECF No. 222 at 53.)

1 grievance, references his Emergency Grievance (Exhibit E), which is what the R&R
 2 pointed out to be Jaeger's contention in his discovery responses. (ECF No. 198 at 21.)
 3 To the extent the R&R determined that this evidence shows the Emergency Grievance
 4 was inputted into NOTIS, such finding is not clear from the records.⁷

5 Based on the records before the Court, it is undisputed that Defendant "cannot
 6 recall" if he forwarded the Emergency Grievance to the grievance coordinator for entry
 7 into NOTIS."⁸ (ECF No. 222 at 50 (Defendant's supplemental response to request for
 8 admission no. 11).) While Defendant is correct that the Emergency Grievance "is
 9 documented in NOTIS," it was "documented" by Plaintiff in Plaintiff's informal grievance
 10 when he complained about Jaeger's authority to address the Emergency Grievance."
 11 (*Id.*; ECF No. 222 at 64.) Defendant has not offered any evidence to show that the
 12 Emergency Grievance was inputted into NOTIS for tracking.

13 The Magistrate Judge found that Plaintiff fails to establish the fourth factor of his
 14 retaliation claim—that Jaeger's act of denying the Emergency Grievance "chilled"
 15 Plaintiff's exercise of his First Amendment rights. (ECF No. 298 at 20.) The Magistrate
 16 Judge found that Jaeger's response to the grievance—"[n]ot an emergency per AR 740;
 17 use proper grievance procedures" (ECF No. 222 at 62)—would not chill a person of
 18 ordinary firmness from exercising his First Amendment rights. (ECF No. 198 at 20.) The
 19 Magistrate Judge also noted that when presented with such a response, a person of
 20 ordinary firmness would follow the non-emergency procedure to file a grievance. The
 21 Court would agree with this conclusion if the chilling inquiry is limited to Jaeger's
 22 response to the Emergency Grievance. However, the chilling inquiry is not so limited
 23 given Plaintiff's allegations when viewed in the light most favorable to Plaintiff as the
 24

25 ⁷ The R&R states in pertinent part that "the evidence reflects that the emergency
 26 grievance was in fact inputted into NDOC's system." (ECF No. 298 at 21.)

27 ⁸ There appears to be some confusion even at the time Plaintiff filed his
 28 grievance to challenge Jaeger's authority to address the Emergency Grievance as to
 whether the Emergency Grievance was inputted into NDOC's system. (ECF No. 222 at
 66 (written notation that "need copy of emergency grievance to research."))

1 non-moving party.

2 A court considers this element—the chilling inquiry—under an objective standard.
3 See *Brodheim v. Cry*, 584 F.3d 1262, 1271 (9th Cir. 2009). “[A] plaintiff does not have to
4 show that ‘his speech was actually inhibited or suppressed,’ but rather that the adverse
5 action at issue ‘would chill or silence a person of ordinary firmness from future First
6 Amendment activities.’” *Id.* (quoting *Rhodes*, 408 F.3d at 568-69). “Speech can be
7 chilled even when not completely silenced.” *Rhodes*, 408 F.3d at 569.

8 Plaintiff alleges that he filed the Emergency Grievance to complain about
9 Jaeger’s refusal to give him the necessary disciplinary form, but Jaeger, who lacked the
10 authority to address emergency grievances, intercepted and “maliciously” denied the
11 grievance and refused to forward the necessary copy of the Emergency Grievance to
12 the grievance coordinator for entry into NDOC’s tracking system. (ECF No. 7 at 5, 14.)
13 The evidence supports Plaintiff’s claim that Jaeger addressed the Emergency
14 Grievance, which complained about Jaeger’s conduct, when he did not have authority to
15 do so and then either destroyed or at a minimum failed to forward the Emergency
16 Grievance for input into NDOC’s tracking system in a purported attempt to prevent
17 Plaintiff from exposing Jaeger’s conduct. Had Jaeger simply responded to the
18 Emergency Grievance and forwarded it to the grievance coordinator to input into
19 NDOC’s system, the Court would agree with the Magistrate Judge’s finding. However,
20 Jaeger purportedly did more—he either destroyed the Emergency Grievance or did not
21 forward it to the grievance coordinator. Viewing Plaintiff’s allegations in the light most
22 favorable to Plaintiff as the non-moving party and drawing all inferences in his favor,
23 Jaeger denied an emergency grievance that complained about his alleged conduct
24 when he did not have authority to address it and then destroyed the emergency
25 grievance so that it would not be on NDOC’s tracking system. A reasonable jury could
26 find that Jaeger’s conduct would deter a person of ordinary firmness from exercising his
27 First Amendment rights.

28 Defendant argues that there is no causal link between Jaeger allegedly acting

1 without authority and the alleged chilling of Plaintiff's speech. (ECF No. 231 at 11; ECF
2 No. 251 at 6.) But the adverse action is the denial of the Emergency Grievance by the
3 person who was the subject of the grievance, when he allegedly did not have authority
4 to act, for the alleged purpose of interfering with Plaintiff's filing of his grievance, not just
5 the purported improper exercise of that authority. In other words, the behavior at issue
6 is Jaeger's alleged improper use of his position to attempt to interfere with Plaintiff's
7 complaint against him. "Retaliation against prisoners for their exercise of this right [to file
8 prison grievances] is itself a constitutional violation." *Brodheim*, 584 F.3d at 1269.
9 Defendant contends that Plaintiff's FAC fails to allege that his speech was actually
10 suppressed. (ECF No. 234 at 11.) This fact is immaterial to the chilling inquiry because
11 "an objective standard governs" this inquiry. *Brodheim*, 584 F.3d at 1271 (citation
12 omitted) (finding that the focus on whether the plaintiff in that case was "actually chilled
13 was incorrect"). Defendant also argues that Jaeger took no further action other than to
14 deny the Emergency Grievance as a non-emergency and to inform Plaintiff to "use
15 proper grievance procedures" which is consistent with AR 740. (ECF No. 251 at 6.)
16 However, as Plaintiff pointed out, Jaeger purportedly destroyed the "canary" copy of the
17 Emergency Grievance because the Emergency Grievance exposed Jaeger's refusal to
18 give him the Disciplinary Form III. (ECF No. 222 at 17.) Again, this evidence, along with
19 Jaeger's alleged conduct in the handling of the Emergency Grievance, may have
20 deterred a reasonable prisoner from exercising his First Amendment rights.

21 The Court finds that genuine issues of fact exist to preclude summary judgment on
22 Plaintiff's retaliation claim with respect to Jaeger's handling of the Emergency
23 Grievance. The Court has also considered Defendant's qualified immunity argument
24 with respect to this claim even though the R&R did not explicitly consider it because of
25 the recommendation to grant summary judgment in favor of Defendant. As with
26 Plaintiff's other retaliation claim (ECF No. 298 at 17), the law was clearly established at
27 the time of Jaeger's alleged conduct that a prison official cannot retaliate against an
28 inmate for engaging in constitutionally protected activity. See *Pratt v. Rowland*, 65 F.3d

1 802, 806 & n. 4 (9th Cir.1995) (“[T]he prohibition against retaliatory punishment is
 2 ‘clearly established law’ in the Ninth Circuit, for qualified immunity purposes.”) A
 3 genuine issue of fact exists to preclude a finding that Jaeger is entitled to qualified
 4 immunity as a matter of law.

5 **V. PLAINTIFF’S OBJECTIONS RE ANCILLARY RULINGS**

6 Plaintiff objects to the Magistrate Judge’s rulings on the following motions: (1)
 7 denial of Plaintiff’s motion to supplement his motion for summary judgment with another
 8 exhibit to support his theory that Defendant was not the shift supervisor and did not
 9 have authority to respond to the Emergency Grievance because whether Defendant had
 10 such authority to be immaterial (ECF No. 302)⁹; and (2) denial of Plaintiff’s motions to
 11 strike two exhibits (Exhibits G and K) attached to Defendant’s response to Plaintiff’s
 12 motion for summary judgment because Plaintiff’s challenge to the content of the exhibits
 13 is not a sufficient basis to strike them from the records (ECF No. 303). (ECF Nos. 306,
 14 307.) The Court agrees with the Magistrate Judge’s reasoning and overrules Plaintiff’s
 15 objections.

16 **VI. CONCLUSION**

17 The Court notes that the parties made several arguments and cited to several
 18 cases not discussed above. The Court has reviewed these arguments and cases and
 19 determines that they do not warrant discussion or reconsideration as they do not affect
 20 the outcome of this Order.

21 It is therefore ordered, adjudged and decreed that the Report and
 22 Recommendation of Magistrate Judge William G. Cobb (ECF No. 298) is accepted and
 23 adopted in part. Plaintiff’s motion for summary judgment (ECF No. 222) is denied.
 24 Defendant’s motion for summary judgment (ECF No. 231) is granted on Plaintiff’s
 25 claims, except for Plaintiff’s retaliation claims based on Defendant’s refusal to give

26 ⁹ For the purposes of deciding the parties’ motions for summary judgment, the
 27 Court assumes that Jaeger did not have authority to address the Emergency Grievance.
 28 Plaintiff has offered sufficient evidence to create a genuine issue of material fact on this
 point. More evidence would be duplicative and unnecessary.

1 Plaintiff the Disciplinary Form III and Defendant's handling of the Emergency Grievance
2 in violation of the First Amendment and Article 1, Section 9 of the Nevada Constitution.

3 It is further ordered that Plaintiff's objections (ECF No. 306, 307) are overruled.

4 It is further ordered that Plaintiff's motion for leave to file a reply (ECF No. 308) is
5 denied.

6 DATED THIS 26th day of August 2016.



MIRANDA M. DU
UNITED STATES DISTRICT JUDGE